

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ROAD & RAIL SERVICES, INC.

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 326, AFL-CIO

Petitioner

Case 4-RC-20881

and

SHOPMEN'S LOCAL UNION NO. 502 OF THE
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL, ORNAMENTAL AND REINFORCING
IRON WORKERS, AFL-CIO

Intervenor

**REGIONAL DIRECTOR'S SUPPLEMENTAL
DECISION AND DIRECTION OF ELECTION**

The Petitioner, Teamsters Local 326, has filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of "All Regular Full-Time and Regular Part-Time 'Preppers'" employed by the Employer at its Newark, Delaware facility. Following a hearing, on November 15, 2004, I issued a Decision and Order finding that the petition was barred by a contract between the Employer and the Intervenor and dismissed the petition. On March 31, 2005, the Board issued a Decision on Review and Order reversing my decision, reinstating the petition, and remanding the case to me for further appropriate action.

While the Petitioner indicated on its petition that it was seeking to represent a unit of "preppers," all three versions of the collective-bargaining agreement between the Employer and the Intervenor describe the bargaining unit as consisting of: "all employees employed by the Company, at its Newark, Delaware facility, excluding all office clerical employees, all professional employees, guards and supervisors as defined in the Act as amended." The record does not contain any evidence to suggest that the petitioned-for unit differs in any way from the contractual unit, and no party has expressed a desire to depart from the contractual unit. I

therefore find that the contractual unit is the appropriate unit, and I shall direct an election in that unit.¹

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer at its Newark, Delaware facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters, Local 326, AFL-CIO**, by **Shopmen's Local Union No. 502 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO** or by **Neither**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

¹ In its Decision, the Board, using the language of the June 5, 2004 Recognition Agreement between the Employer and the Intervenor, stated that the Petitioner was seeking to represent a unit consisting of "the Employer's maintenance, repair, rail car prepping, and mechanical railcar prepping employees (preppers)."

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 17, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or, if a hard copy is also mailed or faxed to the Regional Office, the list may be submitted by e-mail to Region4@NLRB.gov.² If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

D. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. If a hard copy is

² See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's web site at www.nlr.gov.

also mailed to this address, a request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **May 24, 2005**.

Signed: May 10, 2005

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four